Application No. 10/000,335
Amendment dated September 22, 2005
Office Action dated March 22, 2005

REMARKS/ARGUMENTS

Claims 1-18 are pending in the application. Reconsideration in view the

following remarks is respectfully requested. Claims 1-18 are rejected under 35 U.S.C.

103(a) as being unpatentable over Cook, et al., US Patent Number 5,966,304.

Applicants respectfully submit that nowhere in the cited references is the

disclosure, teaching or suggestion of at least: "[a] method of upgrading application

software on a fault tolerant system ... assigning the second engine as a standby engine to

the first engine and *receiving run state updates from the first engine*; assigning the first

engine as the standby engine to the second engine and *receiving run state updates from*

the second engine; ..." (e.g., as described in the embodiment of claim 1).

The Office Action asserts that regarding the limitation of "assigning the second

engine as a standby engine to the first engine and receiving run state updates from the

first engine," Cook discloses a system wherein the secondary controller becomes the

main execution controller of the system (Lines 28-32 of Column 2).

First, Applicants respectfully submit that regardless of whether the cited section

actually describes a system wherein the secondary controller becomes the main execution

controller of the system (Applicants assert it does not), the Office Action fails to cite a

section describing receipt of run state from the first engine as specifically recited in the

embodiment of claim 1. Lines 28-32 of column 2 of Cook do not disclose the relevant

limitations, as shown below. They state:

> Specifically, the present invention provides a primary controller communicating
> with a secondary controller to, at a switch-over time, cease execution of a user
> program and cause the secondary industrial controller to begin execution of the
> user program.

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The cited section generically describes a the communication between a primary controller communication with a secondary controller to, at a certain point stop running a program and allow the secondary controller to execute a program. However nowhere is the teaching suggestion or disclosure of assigning the second engine as a standby engine to the first engine and *receiving run state updates from the first engine*. In order for Cook to support a proper 102(b) rejection, Cook must disclose each and every limitation of independent claim 1. It does not.

Moreover, other sections of Cook confirm this. As argued previously, lines 33-55 of column 9 purport to describe steps to upgrade a functional module and are summarized as follows:

1. The module 16a is removed from the rack 14 of processor 12a.

2. Module 16a is upgraded in hardware or firmware while control continues in controller 12b with the controller 12a disqualified.

3. Module 16a is re-installed in controller 12a.

4. Corresponding module 16b to the one upgraded in the controller 12a is removed from controller 12b.

5. Module 16b is upgraded in hardware or firmware while control continues in controller 12a with the controller 12b disqualified.

6. Module 16b is re-installed in controller 12b.

It is apparent that lines 33-55 of column 9 of Cook merely discloses a method by which two controllers can be upgraded through the use of sequential disqualification. However, it is equally clear that nowhere in the cited sections of Cook (*see* e.g., steps 2 and 5) is the teaching suggestion or disclosure of "[a] method of upgrading application software on a fault tolerant system having a first engine and a second engine, the first and

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second engine executing an application, the method comprising: ... assigning the first

engine as the standby engine to the second engine *and receiving run state updates from*

the second engine...".

Lastly, the Office Action argues that the Cook discloses "a disqualified controller

12b performs a qualification per process block 116, becoming a qualified secondary

controller 12b", citing lines 60-65 of column 9, and asserts that qualifications constitutes

a receiving of state updates, and thereby covers the claimed limitations. Applicants

disagree and assert the Examiner's conclusions are wholly unsupported by the text of

Cook. Column 9 lines 60-65 state:

> Result: Per the flow chart of FIG. 7, insertion is detected at process block 108 and
> disqualified controller 12b performs a qualification per process block 116,
> becoming a qualified secondary to controller 12b.

The cited section merely discloses controller 12b performing a qualification

process and becoming qualified to secondary controller 12b. The cited section of Cook

contains no teaching, suggestion or disclosure of *state updates*, or any such state updates

being *received from the second (or first) engine* (as appropriate), as specifically recited in

the embodiment of claim 1.

Therefore, since each and every limitation is not taught or suggested in the Cook

reference, Applicants submit the Cook reference is inadequate to support proper 35

U.S.C. 102(b) rejections, the rejections should be withdrawn, and independent claim 1 is

in condition for allowance. Independent claims 11 and 15 include similar limitations and

therefore are also in condition for allowance. Claims 2-10, 12-14 and 16-18 depend from

allowable independent claims and therefore are allowable as well.

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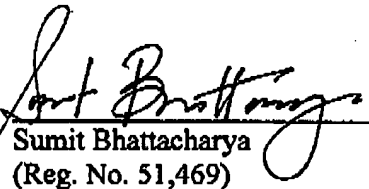Office Action dated March 22, 2005

For at least all the above reasons, the Applicants respectfully submit that this

application is in condition for allowance. A Notice of Allowance is earnestly solicited.

The Examiner is invited to contact the undersigned at (408) 975-7500 to discuss

any matter concerning this application. The Office is hereby authorized to charge any

additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to Deposit

Account No. 11-0600.

Respectfully submitted,
KENYON & KENYON

Dated: September 22, 2005   By: _____
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